

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DENISE GARY,

Plaintiff,

vs.

CIVIL NO. 10-978 WDS

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

AWARD OF ATTORNEY FEES PURSUANT TO 42 U.S.C. §406(b)(1)

THIS MATTER comes before the court on Plaintiff's attorney's Motion for an award of Attorneys Fees pursuant to 42 U.S.C. §406(b)(1). [Docket No. 24]. Defendant declines to assert a position with regard to the reasonableness of the requested award, and instead advises the court to fulfill its duty to review the request to insure its reasonableness.

Findings

The court, having reviewed the file and being otherwise fully advised, **FINDS** as follows:

- (1) Plaintiff's attorney is entitled to an award of attorneys fees pursuant to 42 U.S.C. §406(b).
- (2) Fees awarded pursuant to 42 U.S.C. §406(b), when combined with fees paid or payable by the Commissioner pursuant to 42 U.S.C. §406(a), may not exceed 25% of past due benefits.
- (3) Plaintiff was awarded Sixty Seven Thousand Eight Hundred Sixty Seven Dollars (\$67,867.00) in past due benefits.
- (4) Fees awarded by this court pursuant to 42 U.S.C. §406(b), when combined with fees paid or payable by the Commissioner pursuant to 42 U.S.C. §406(a), may not exceed

Sixteen Thousand Nine Hundred Sixty Six and 75/100s Dollars (\$16,966.75).

- (5) Plaintiff's attorney has received from the Commissioner the amount of Six Thousand Dollars (\$6,000.00) pursuant to 42 U.S.C. §406(a).
- (6) In light of the award paid or payable pursuant to 42 U.S.C. §406(a), the fee sought by Plaintiff's attorney, Ten Thousand Nine Hundred Sixty Six and 75/100s Dollars (\$10,966.75), is the maximum fee that can be paid pursuant to 42 U.S.C. §406(b).
- (7) Plaintiff's attorney provided quality representation and was not responsible for any delay in the resolution of this matter.
- (8) The amount of benefits paid to Plaintiff was not so large in comparison to the time expended by her attorney as to require a further reduction of fees.

Order

Plaintiff's attorney is awarded fees in the amount of Ten Thousand Nine Hundred Sixty Six and 75/100s Dollars (\$10,966.75) for services rendered to Plaintiff in this court. Plaintiff's attorney shall reimburse to Plaintiff those fees previously awarded under the Equal Access to Justice Act.



W. Daniel Schneider
United States Magistrate Judge